

LAW AND THE ART WORLD

Due Diligence: Charitable tax deductions

By Bill Frazier ©2012

It is always interesting to me how issues seem to run in cycles and problems in groups. Two alert artist readers have called to tell me that they were each informed by their accountants that they could donate artwork to charitable organizations and take a fair-market-value tax deduction for their subjective value of the paintings.

I do not know where the accountants got their information, but that has not been the law in at least 40 years. This type of deduction is a blatant red flag to the IRS, so artists, and especially accountants, should know better.

Lest there be any misunderstanding, neither artists, nor anyone else for that matter, can donate their art, work product, or time, to a charitable or nonprofit or tax-exempt organization in return for a charitable tax deduction. Artists are not singled out for this treatment.

The same law applies to writers, lawyers, doctors and construction people, or anyone else donating their own time and labor. Although tax regulations say that one may deduct the cost of materials used in the creation of the donated item, in most cases, artists have already expensed off the actual cost of materials and supplies as a business expense.

Related to this subject is long-pending Congressional legislation designed to give artists, writers and musicians a tax incentive to donate their work to appropriate institutions. Still pending in the United States Congress are two bills, the Artist-Museum Partnership Act in the Senate, and the Promotion of Artistic Giving Act in the House of Representatives.

These two acts are the same thing, and while they are designed to provide a charitable tax deduction for artists who donate their own work to qualified institutions, there are many conditions and definitions associated with the acts' provisions. Look these up on the internet to see how they may affect you as an artist or your favorite organization.

Tax-exempt vs. nonprofit

While on this point, potential donors should understand that not all charitable or

nonprofit organizations are tax-exempt. Just because an organization says it is doesn't make it so. Tax-exempt and nonprofit legal status is not the same thing. Nonprofit status is conferred by a state by registering appropriately with the secretary of state. Tax-exempt status is granted to nonprofit (must be nonprofit to be tax exempt) groups by the IRS after an organization has met a number of objective standards justifying the exemption.

Even though the organization is nonprofit and tax exempt, a donation to it still may not be fully deductible. The full deduction is based on the type of organization and the use to which the donation is put.

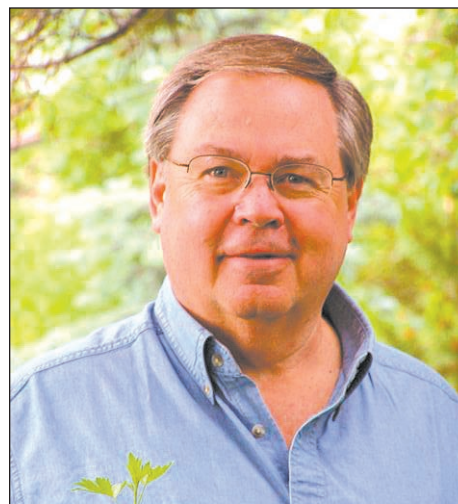
For example, the donation of cash is rarely ever a problem. Problems may occur for a donor when art, or other appreciated property, is donated to a hospital, museum or school for resale. The donor will not then be entitled to the full fair-market-value deduction because hospitals, museums and schools are not in the business of selling artwork and that is not the reason for their tax-exempt status. The art, or other appreciated property, is being given simply to be resold at some future event to raise funds.

Conversely, the value of artwork donated to a tax-exempt art museum for accession and exhibition should be fully deductible because it is part of the tax-exempt cultural and educational purpose of the museum to conserve and exhibit its collection of artwork. When a donor gives such a gift, he must be aware of IRS requirements for certified appraisals and the other paperwork for filing with the tax return.

Charitable giving can be tricky

The purchase of artwork from a charitable organization sale or auction does not make the purchase price tax-deductible as a charitable donation. This is not a donation. The buyer is buying a painting or sculpture just as he would at a downtown gallery. The buyer pays money and receives the artwork in return, thus there is no gift or donation.

Similarly, if a buyer's premium is charged, that is not deductible because it is a required part of the purchase and not a willing or voluntary gift or donation. The whole issue of



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charitable giving and art can be tricky, so be sure to seek sound professional advice before committing large sums of money.

Do not assume that the purchase of tickets to an event from a nonprofit organization will generate a charitable tax deduction. So long as the purchaser is receiving something of value in return for the purchase price, there is no donation.

Here is a common scenario. A local organization or community commissions a statue of its local hero – for example, an Indian chief, a cowboy, a war hero, or coach – and solicits donations to pay the artist and foundry. In return, each donor is to receive a gallery- or table-size limited edition version of the statue. The IRS will argue that there is no charitable deduction because the donor has received a valuable item in return for the donation, that is to say, the purchase price.

Sculptors and organizations continue to market this concept, but attempting to take such a charitable deduction is not lawful and may generate an audit of an otherwise clean tax return.

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Find "Law and the Art World" online

Bill Frazier's "Law and the Art World" series is also available online with other articles from this and previous editions of *State of the Arts*.

Now there is a quick and easy way to search within "Law and the Art World" for Frazier's legal perspective on specific topics. His articles have been regrouped into 11 categories under the title "Artists' Legal Advice." In these, Frazier discusses contracts, auctions, taxes, copyright issues and other subjects of recurring interest to artists.

Please bear in mind Frazier's important advice when using the resource:

"... Don't forget that the law is a dynamic and ever-changing thing."

To reach the collection of articles, go to the arts council website at www.art.mt.gov and select the *State of the Arts* link on the right side of the home page. That takes you to the *State of the Arts* "News Articles" page and a drop-down box under the "View articles for specific section"; then choose "Artists' Legal Advice" from the drop-down menu.

Tech Talk: Social media and "real" websites

By Mark Ratledge

I've noticed over the last few years from working in the arts and humanities worlds that some businesses and organizations use social media sites – like Facebook – as primary websites. By that, I mean the business or organization doesn't have its own destination website and uses a social media site as its sole presence on the web.

I assume it's because social networking sites are great for marketing and outreach; how else can you reach literally billions of users on the internet? And for free?

I know that Facebook and other social media sites are easy to use, because they are engineered to be used by people of all ages and technical abilities. Log in, point and click, and you're connecting with everyone. Someone can quickly get their business or organization or artwork out there for users to view and share without having to deal with the nuts and bolts of a "real" website.

But a site based on social media won't be quite professional enough for a business or organization to use as a sole destination website. That's because social networking sites focus on people's interests and what they wish to pass around to their friends and acquaintances. And as a result, a Facebook web page can be very cluttered with users and comments and links, all distracting from the main mission of the page and the focus of the business or organization.

But most importantly, it's not possible to control what appears on a Facebook page or what Tweets are listed in a Twitter feed. What appears is what everyone else wants and what anyone wants to say, and you may find that some content might not be appropriate to your organization.

All businesses and organizations need social media. But they also need a professional internet "landing place," separate from social media – one that provides a web presence that is under your control.

But a real website for your business or organization can be as easy to set up as Facebook, and be free, too. And you may not even need a local teenager to help with the technical side of things.

There are many businesses out there that provide free websites as a service, but about the best is called WordPress. Using WordPress.com is an easy and free way to get a website going. You will also be able to "connect" the site with all the different social media services and benefit from that exposure while at the same time maintaining a stable and professional looking website for your business or organization.

WordPress is easy to learn and is expandable, too. And if you grow out of WordPress.com, you're not "locked in" and won't find your images and content difficult to retrieve. All you need to sign up and start a site is an email address. I'll explain the different Wordpress.com options next issue.



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